



City of Milpitas
455 E. Calaveras Boulevard
Engineering Division
Special Projects Section
Milpitas, California 95035

December 8, 2004

**SUBJECT: REQUEST FOR PROPOSALS (RFP) TO PROVIDE ARCHITECTURAL AND
ENGINEERING (A&E) SERVICES FOR THE NEW MIDTOWN EAST & WEST
PARKING GARAGES**

Your firms have been contacted to inform you of the quick turn-around RFP process for the proposed New Midtown East & West Parking Garages. The RFP is being issued to you via electronic mail attachments, which should be reviewed in preparation for the interview.

The schedule will be followed as described in the RFP and confirmed below:

December 8, 2004 Issue RFP

December 16, 2004 Pre-Proposal Conference (1:00PM-3:00PM @Milpitas City Hall Committee Room)

December 20, 2004 Alternative Pre-Proposal Conference (10AM @ Milpitas City Hall Committee Room)

January 6, 2005 Proposal Submittal Due

January 12-14, 2005 Interview with Project Staff

January 20-21, 2005 Follow-up Interview

February 15, 2005 Council Agreement approval

March 1, 2005 Agreement Executed & Notice to Proceed

September 2005 Complete Design & Bid Documents

The RFP and the background documents are located on City of Milpitas FTP website (www.ci.milpitas.ca.gov). If you have any questions, please contact Andrew Brozyna, Associate Engineer at (408) 586-3415 or Steve Erickson, Acting Principal Engineer, at (408) 586-3414, or Mark Rogge, Capital Improvement Program Manager and Library Project Manager, at (408) 586-3403.

Sincerely,

Andrew Brozyna
Associate Civil Engineer



City of Milpitas
455 E. Calaveras Boulevard
Engineering Division
Special Projects Section
Milpitas, California 95035

December 8, 2004

TO: PROSPECTIVE ARCHITECTURAL AND ENGINEERING CONSULTANTS

SUBJECT: REQUEST FOR PROPOSALS (RFP) TO PROVIDE ARCHITECTURAL AND ENGINEERING (A&E) SERVICES FOR THE NEW MIDTOWN EAST & WEST PARKING GARAGES

Dear Consultant:

The City of Milpitas and the City of Milpitas Redevelopment Agency ("City") is seeking the professional services of a qualified and proven Architectural and Engineering (A&E) consulting firm or team (Consultant) for analysis, design, preparation of construction plans and specifications, cost estimates, schedules, construction support services, post-construction support, and other services related to the design and construction of new parking garages located within the City's midtown development on North Main Street. The design and construction of the new parking garages shall be coordinated with the new Milpitas Public Library, Main Street Streetscape Improvements, and other facilities to be done by others.

GENERAL

North Main Street Development

The North Main Street Development projects are described in a CEQA Environmental Impact Report available for review on the City's website. The projects include a new 60,000 square foot Public Library, that incorporates and restores an historic 1920's neoclassical Grammar School; 110-unit Senior Housing, that relocates and renovates a 1920's Prairie-style residence, a new 60,000 square foot County Valley Health Center; two new parking garages and a new Main Street streetscape to create a pedestrian-friendly center for the Midtown; and energy generating facilities. Main Street will have wide decorative sidewalks, street trees, decorative lighting, and street furniture, along with new utilities and pavement to support the proposed and future development.

Midtown East Garage

The City Council recently approved a Building Program for the new Milpitas Public Library. The Building Program includes a new 3-4 story east-parking garage that will serve the new Library and other Midtown uses. The East Parking Garage, envisioned in the Library Building Program, and as refined in the Library Conceptual Design plan, will have sufficient space for between 260 to 325 parking spaces, organized on three to four stories. Special features of the parking garage include: a public display area for the City's restored antique fire truck; three decorative vehicle entries/exits; four pedestrian entries, including direct

entry into the new library; elevators, stairs; and an innovative energy efficient design, including energy generation; and possibly approximately 5,000 square feet of commercial space.

The parking garage designer will be expected to assist the City, and coordinate with the library design consultant in refining the exact size and shape of the structure, and advise the City of marketing opportunities to facilitate new development and revenue sources. The parking garage may become part of a new parking district that could require an increase in the demand for parking spaces beyond the current Library Building Program (between 260 to 325). The design will need to include automated gates for access control, security systems, including video recording; voice communications with the City's Emergency Dispatch Center; and linkages to the Library building for power, telecommunications and monitoring.

The East Parking Garage design must be coordinated with the new Library and Main Street improvements to maximize the overall appearance and provide excellent circulation, and service to the community. The East Garage shall be designed and constructed first, so this garage can be used as a parking and staging area during construction of the library and the other developments on North Main Street. Refer to the project schedules included in this RFP. Refer to the Library Conceptual Design for more information.

Midtown West Garage:

A second parking garage facility, the Midtown West Parking Garage, is proposed to address the parking demands for the County Valley Health Center and other Main Street uses. The west garage would be approximately 200,000 square foot structure with sufficient space for between 275 to 475 parking spaces, up to six stories tall. Optional special features of the west-garage will include: up to 25,000 square feet of space for future commercial/retail/restaurant/food preparation kitchen facility on the 1st floor; decorative vehicle entry/exit, and decorative features that serve as a distinctive architectural statement and landmark for the Midtown area; pedestrian entries, including a convenient entry/exit for patrons using the health facility; elevators and stairs; an innovative energy efficient design, including energy generation, and space for a banquet facility on the top floor with up to 600-seating capacity including a catering kitchen facility. These optional features may be built initially or constructed as tenant improvement phases later.

The west-parking garage designer will be expected to assist the City, and coordinate with the Main Street design and the health facility design to refine the exact size and shape of the structure, and respond to opportunities to facilitate new development and revenue sources. The west-parking garage may also become part of a new parking district. The design will need to include automated gates for access control, security systems, including video recording; voice communications with the Emergency Dispatch Center; and linkages to the health facility and other facilities for power, telecommunications and monitoring.

The West Parking Garage design must be coordinated with the other new development on North Main Street to maximize the overall appearance and provide excellent circulation, and service to the community.

PRELIMINARY TIMELINE

<u>East</u>	<u>Midtown Parking Garage East Midtown Parking Garage</u>	
Complete Bid Package	September 2005	September 2005
Bid Period/Contract	October – December 2005	October – December 2005
Construction	January –December 2006	January – June 2007

BACKGROUND

City of Milpitas - The City has a population of approximately 65,000 and is located in the Silicon Valley, between the cities of San Jose and Fremont. Growth was experienced immediately after incorporation in 1954, when the population was 825. As the population has grown, it has become more diverse. Today, over 50 languages are spoken amongst Milpitas residents, making the City one of the most diverse in the nation.

The City has outgrown the existing library (19,200 square feet,) which is now located within the Civic Center (Town Center) complex and was constructed in 1982. The library has the highest circulation per square foot in Santa Clara County, and had a total circulation in excess of 1,400,000 items in 2001.

Available studies

A library Building Program was completed and approved in January 2004, which confirmed the space requirements for the desired programming. Additionally, the study developed a layout concept for the new library at the historic grammar school site, and the Midtown Parking Garage east and south of the Library. The City Council awarded a design contract to Group 4 Architects in 2004, and the design process is nearing completion of the conceptual design phase. Completion of the conceptual phase including layout of the new library and the footprint of the new garage is anticipated by January 2005. The North Main Street Development CEQA draft EIR provides additional information.

Other information is available on line at www.ci.milpitas.gov including a public folder with information for the Library Project, and streaming video of past City Council presentations, and other general information.

- Library Needs Assessment
- Library Building Program
- Draft Library Conceptual Design
- North Main Street Developments CEQA Draft EIR
- Midtown Plan
- Main Street Streetscape Plan

SCOPE OF SERVICES

The professional services will consist of full architectural and engineering (A&E) services including all phases of architectural design, review, assessment and refinement of the parking garage building program, to preparation of schematic design, design development, construction documents, Title 24 studies, geotechnical, seismic, noise and vibration analysis, as well as other related studies and reports required for approval and permitting of the project. The Consultant shall provide the services for all necessary design and engineering disciplines including, without limitation a space planner, interior designer, mechanical, electrical, plumbing, fire protection, communications and technology, security, structural, soils geology, acoustical, lighting, graphic design, signage, landscape architecture, traffic engineer, and civil engineering. The construction documents shall be complete and fully integrated to allow for City building permitting and construction bidding in accordance with the public contracting codes.

Architectural & Engineering support services for bidding, construction and post-construction, shall also be required. A complete description of the Scope and deliverables is included in Exhibit "A" Scope of Consultant Duties and Services in the attached sample Midtown Parking Garage Agreement.

Preliminary Summary of Garage Amenities:

Subject	East Parking Garage	West Parking Garage
Parking Spaces	260 – 325	275 – 475
	Bicycle parking	Bicycle parking
Energy Generation	Cogeneration	Cogeneration
	Library & Garage back-up	Health Center & Garage back-up
	Photo-voltaic	Photo-voltaic
Vertical Transportation	2 Elevators, stairs	2 Elevators, stairs
Commercial Space	Possible future on top floor	Future 1 st and top floor
	Power & telecom panels	Power & telecom panels
	Plumbed for future restrooms	Plumbed for future restrooms
Security System	Digital Video Recording	Digital Video Recording
	Call box to Central Dispatch	Call box to Central Dispatch
	Card Reader/timer gates	Card Reader/timer gates
	Security lighting	Security lighting
	Fire suppression/alarm sys.	Fire suppression/alarms sys.
Utility	Electric, Telecom, Maint.	Electric, Telecom, Maint.
	Refuse/Recycling bin encl.	Refuse/Recycling bins encl.
	Storage	Storage
		Grease-trap, exhaust hood ducting
Lighting	High efficiency	High efficiency
Ventilation	Natural preferred	Natural preferred
	Sensor-driven mech. if nec.	Sensor-driven mech. if nec.
Decorative Cladding	at entries	at visible planes
Signage	Coord. w/ Library	Coord. w/ City
Special Features	Welcome entry to Library	Distinctive Architectural Statement
	Historic Fire Engine Display	Lobby for top floor meeting space
		Possible Critical Facility for Emergency

Parking Garage design intent/purpose - The new Midtown East and West Parking Garages, shall be designed and constructed, to be welcoming, efficient, and of sufficient size to

accommodate the needs of the community. The building's design will make self-orientation simple for the user, serve patrons of all ages and many levels of ability and mobility, and provide a facility that can be reasonably operated and maintained within a modest budget. The Parking Garages will provide excellent design of the following elements: energy conservation/generation, acoustical and vibration isolation, technology, security and a storefront suitable for retail beverage/food service.

It is the intent of the project that the principal architectural characteristics, layout, style and materials shall provide the City of Milpitas with structures that when completed, will provide highly efficient and very functional parking garage facilities, and will fit appropriately into the new Midtown setting.

SELECTION PROCESS:

The Consultant must comply with the following eligibility requirements:

- The Principal Architect and Project Architect work location must be approximately within an hour's travel time of the project site. Preference is given to local business in that no reimbursement is allowed for travel time, meal and/or accommodations.
- The consultants' key personnel identified in the proposal shall be dedicated to the project for the entire duration. The City shall allow substitutions only in the event the employee leaves the firm, or is otherwise unable to perform the job duties;
- Consultant shall be capable of producing construction drawings in AutoCAD version 2004 format and preparing or converting specifications to Windows Microsoft Word version 2000;
- Consultant shall utilize, and become proficient with the City's project management software, Constructware. The Consultant shall purchase the required number of software licenses and training as required for Consultants' staff and subconsultants to provide the required level of service to the City.
- Consultant must perform a minimum of 51% of the dollar value of the design contract;
- Consultant shall have successfully completed at least one parking garage with storefront elements and successfully completed at least one project involving energy conservation/generation.
- Consultant shall agree to execute the Midtown Parking Garage Agreement (attached) for these consultant services. This agreement contains indemnification provisions that require the consultant to indemnify and hold harmless the City against any and all liability, as indicated in the draft consulting services agreement.

The following is the selection process to be used for determination of the most qualified consultant for this project:

1. The City will review and rank the written proposals, based upon the following:
 - the overall experience of the firm, project architect and project team, and unique qualifications
 - record of successful similar work performed for other cities/public agencies by the project architect and project team.
 - other factors that may distract the expertise of the firm.
 - completeness and responsiveness to this RFP.

Based on this review, and verification of written proposal materials submitted, the Consultant Review Board, which may consist of City staff and outside agency representatives, will develop a short list of the top Consultants, who can continue with the selection process. Those consultants not included in the shortlist will be notified in writing by the City and no further consideration of their proposals will be made.

2. Those Consultants who succeed in ranking high enough to make the short-list, will be notified by phone and fax, with a scheduled time for their interview (see schedule below.) The interview may be videotaped.
3. Based upon this first interview, the highest-ranking consultants will be qualified for consideration of the current parking projects, as well as any future related projects over the next 2 years. Consultants may be requested to interview a second and final time. The City may select a single

consultant or one for each project. The total time allowed for the interview may be between 40 to 60 minutes. The interviews may be videotaped.

4. A consultants' final placement on the list will be based on the rating of the selection committee and completion of satisfactory reference checks. The selection committee may make a recommendation to the City Council, which shall make a final determination and approval of the consultant selected. The selected consultant is expected to execute the Project Agreement within two weeks of written award notification. The City expects to have the selected Consultant and their team on board, ready to commence the work, in March 2005.

TIME SCHEDULE

The time schedule for receiving proposals, selecting consultants, conducting interviews for the selection of the consultant firm to perform the work is as follows:

Issue RFP	December 8, 2004
Pre-Proposal Conference:	December 16, 20, 2004
to commence at City Hall, then continue at North Main Street. Consultants are required to attend one of the pre-proposal conferences.	
Proposal Submittal Due:	January 6, 2004
Interview with project Staff:	January 12-14, 2005
Follow-up Interview	January 20-21, 2005
Council Agreement Approval	February 15, 2005
Agreement Executed & Notice to Proceed:	March 1, 2005
Complete Design & Bid Documents	September 2005

PROPOSAL REQUIREMENTS:

Consultants choosing to respond to this RFP are required to submit all of the information outlined in this section and Attachment A, Project Scope and Phasing. Firms must indicate their willingness to execute the Midtown Parking Garage Agreement (Attachment C). Consultant must submit any requested changes to the Agreement with the RFP response. The City reserves as its sole right to accept, reject, or modify any requested revisions. The City shall not consider any requested revisions to the Agreement requested by the Consultant after submission of the proposal. However, the City reserves the right to modify and refine the scope of work, prior to execution of the contract.

In addition, interested Consultants are encouraged to submit any additional information available that demonstrates any distinctive qualities of their firm or team, that positions them to be uniquely qualified for this opportunity.

To be responsive to this RFP, proposals shall be submitted in *two separate packages*, and specifically address all the information described as follows:

Proposal Package #1:

The proposal shall be bound with tabs identifying each section. The body of this statement (sections 1 through 4), shall not exceed 25 pages. Resumes for the proposed project team and subconsultants shall be provided in the appendix (Section 5).

The following information must be provided in the proposal so that the City may review your firm's qualifications and approach to this type of project:

Section 1. Project Team and Qualifications

- The names and addresses of the Architectural/Engineering Consultant and subconsultant firms on the team. Provide an organization chart of your proposed project team.

- The name and unique qualifications of the Project Architect (individual responsible for the day-to-day design and management of the Project) and how long this individual has worked with the proposed project team (staff and subconsultants.)
- Experience of the Consultant and team in providing the requested scope of services, specifically referencing governmental type projects that are similar in size, type and scope to this project. Include the date of the project, project budget, contact person and phone number of that person who can provide information regarding the Consultant's work.
A listing of projects and references for projects that the Consultant believes would address their qualifications for this assignment. Limit references to 5 projects including those requested in the item above (and exclude references over 10 years old.) Include a matrix of these similar projects showing comparison of: 1) final construction cost with client's budget; 2) Consultant's estimate; and 3) actual bid price of construction contract.
- A listing and brief description (1 Paragraph) of the Consultant's current projects, status and time of completion.
- Provide names and qualifications of other key personnel, including subconsultants, to be used on this project, and their capacity or role, including applicable descriptions and dates of similar work these persons have been directly involved with. Include specifics about the duties performed.
- A list of pending or completed litigation within the past five years related to the Consultant's, or subconsultants work related to services performed by the Consultant or its subconsultants.
- Consultant shall provide a statement indicating the Midtown Parking Garage Agreement has been reviewed and if selected by the City, the Consultant shall execute this agreement and begin work immediately.

Section 2. Project Understanding and Challenges

- This section shall define the Consultant's understanding of the proposed draft scope of work, at a minimum, and shall describe the work proposed by the consultant; The consultant is encouraged to review the draft scope of work as a minimum level of commitment, and revise, refine or recommend additional or optional scope of work for consideration. Particularly indicate revisions to the draft scope of work that illuminate the consultant's understanding and experience in performing similar work.
- Describe anticipated challenges that may prevent completion within the timeframe set forth in this RFP and proposed strategies to address these challenges.

Section 3. Project Management

- Describe your firm's project management and cost control system, which you propose to use for your project team and subconsultants, to maintain the project schedule and budget.
- Define your firm's Quality Assurance/Control Program and what measures you will take to delivery a high quality project to the City.

Section 4 Project Workplan

- Describe your firm's technical work plan for this project. This description should include but not be limited to:
 - A brief narrative of the technical approach to be followed and the quality assurance program to be used;
 - A detailed work plan outlining the proposed work steps for each of the major tasks;
 - Provide a detailed time commitment (schedule) for completion of each of the various phases and major tasks, and completion date of the construction documents. Allow sufficient time for City reviews comments and plan revisions.

Section 5 Appendix

- Provide resumes for all project team members.

Five complete copies of the proposal must be furnished. Failure to comply with these requirements may be cause for a firm's proposal to be considered non-responsive; and therefore be rejected. The City reserves the right to waive any minor proposal irregularities.

Proposal Package #2:

The Consultant shall submit a fee proposal in a separate sealed envelope. This fee proposal shall be submitted to the City Clerk's office and will not be opened until the Consultant selection has been made. Fee proposals should be detailed by phase of work and by subconsultant. Should the fee be higher than budgeted, the City reserves the right to either negotiate these fees, or consider the next qualified consultant whose proposal is within the City's budget. Fee proposals shall not be public records except for the fee proposal for the contract recommended for award by the City.

The City reserves the right to adjust the scope of work and associated fees prior to execution of the contract. The City also reserves the right to amend the contract or terminate the contract.

**Submit Proposal packets no later than 5:00 pm on January 6, 2005,
at the Public Service Counter, Milpitas City Hall.**

Address packets as follows:

Midtown Parking Garages Proposal packet #1- Sections 1 thru 5

*City of Milpitas
City Engineer's Office
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Steve Erickson, Acting Principal Engineer*

Midtown Parking Garage Proposal packet #2- Fee proposal

*City of Milpitas
City Clerk's Office
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Gail Blalock, City Clerk*

Note: Proposals received after the specified time and date will not be accepted.

If you have any questions or desire additional information, contact Steve Erickson, Acting Principal Engineer, (408) 586-3414, or Mark Rogge, Capital Improvement Program Manager and Library Project Manager, at (408) 586-3403 or email (serickson@ci.milpitas.ca.gov) or (mrogge@ci.milpitas.ca.gov) or call the Library Project Team at (408) 586-3402.

Sincerely,

Steve Erickson
Acting Principal Engineer

ATTACHMENTS:

1. Exhibit A - SCOPE OF CONSULTANT DUTIES AND SERVICES
2. Exhibit B - MIDTOWN PARKING GARAGE AGREEMENT and

EXHIBIT A

SCOPE OF CONSULTANT'S DUTIES AND SERVICES

CONSULTANT shall perform professional services related to the pre-design, site planning, conceptual design; schematic design; design development; construction documents; bidding and award, construction

Architectural support, project close-out and warranty period, for the new Midtown Parking Garages East and West to be located at North Main Street, in the City of Milpitas, California, ("PROJECT"). Consultant shall provide complete, professional, high quality services and products. Consultant shall also provide consultation to City staff, City Council and others who are involved with the Project and shall provide expertise, guidance, advice and assistance in completion of the Project.

SECTION 1 GENERAL:

The PROJECT will include one or two new parking structures. The approximate size of the East Midtown Parking Garage is 180,000 gross square feet, including (260 to) 325 parking spaces. The approximate size of the West Midtown Parking Garage is 200,000 gross square feet, including (275 to) 400 or more parking spaces. Refinements during the Conceptual Design and Schematic Design phases of this agreement will allow determination of the exact size.

The CITY'S Project staff (PROJECT MANAGER) shall manage the design of this PROJECT and performance under this AGREEMENT. CONSULTANT shall receive final direction from the PROJECT MANAGER or authorized designee only. The Project Manager shall resolve any conflicting direction from other groups, departments or agencies.

Whether described in more detail below or not, Consultant shall perform all work necessary to complete the design and the Project. Consultant will provide a 100% complete design that shows all construction work and all details so that the design will permit accurate bids and no change orders will be necessary during construction due to defects, errors, or omissions in the design.

All of the services to be performed by the CONSULTANT under this AGREEMENT from the inception of the AGREEMENT until termination of the AGREEMENT shall meet the professional standards and quality described in the AGREEMENT. The design prepared by CONSULTANT shall provide for a completed PROJECT that conforms to all applicable codes, rules, regulations and, guidelines or applicable official interpretations thereof that are in force at the time such documentation is prepared, including but not limited to ADA requirements and State and local building code requirements.

A) General Performance Requirements:

1. CONSULTANT shall coordinate this scope of all services with the CITY and CITY'S separate consultants and contractors as needed and as directed by CITY.
2. CONSULTANT and the CITY recognize the importance of the need to maintain the Project Architect, throughout the entire duration of services. Should the Project Architect not be available for any period longer than 5 working days, the CONSULTANT shall notify the City and provide the City with the services of a more senior Architect during the absence of the Project Architect. This is of utmost importance during the construction phase. If the CONSULTANT does not fulfill the requirements of this provision, the CONSULTANT agrees to pay to the City liquidated damages of \$1,000 per day that CONSULTANT breaches this provision.
3. The schedule for the performance of the CONSULTANT'S services included in EXHIBIT B may be adjusted as the PROJECT proceeds by mutual agreement. CONSULTANT shall manage the CONSULTANT'S services, manage its SUBCONSULTANTS and administer the Project. CONSULTANT shall consult with the CITY, research applicable design criteria, communicate with members of the Project Team, and issue biweekly progress reports or as otherwise directed by the CITY.
4. CONSULTANT shall prepare, and periodically update, a Project schedule for the CITY'S review. The Project schedule shall identify milestones, dates for decisions required of the CITY, design services furnished by the CONSULTANT and the CONSULTANT'S SUB-CONSULTANTS, dates of reviews and approvals required by all governmental agencies that have jurisdiction over the Project, deliverables to be furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and substantial completion of the Work. The schedule shall include adequate periods of time for review and consideration by City. The project schedule shall include these milestone dates:
 - conceptual design shall be completed by _____, 2005;
 - schematic design (30%) shall be completed by _____, 2005;
 - design development (60%) shall be completed by _____, 2005;
 - construction documents at 99% and 100% shall be completed by September 2005;
 - Other milestones pertinent to the completion of the project.
5. CONSULTANT shall submit design documents to the CITY for purposes of review and evaluation by the CITY at the end of the Conceptual Design, Schematic Design

Development and Construction Document phases. CONSULTANT shall address all comments provided by the City and make revisions as required by the CITY for each task in a timely manner. In responding to review comments and revising the design documents CONSULTANT shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent. Submittals that have not addressed prior review comments will either be accepted as an intermediate submittal, not having satisfied the milestone, or may be rejected, until the submittal addresses the prior review comments.

6. CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
7. CONSULTANT shall provide the City with information and recommendations on the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.
8. Upon request of the CITY, CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.
9. CONSULTANT shall identify any site-related discrepancies from survey reports and other site reports that might affect the Project.
10. CONSULTANT shall prepare team Organizational meetings to introduce team members, to establish Project communication, and to discuss the participants' roles, responsibilities, and authority.
11. CONSULTANT shall meet with the CITY Building, Fire and Planning departments, prior to the start of schematic, design development and construction document phases, in order to review local and state codes for zoning, building, and CEQA submittal and approval requirements.
12. CONSULTANT shall make all submittals required to obtain building and Fire permits for the Project to the City of Milpitas Building Inspection Division, 455 East Calaveras Blvd, first floor. The Consultant shall meet with the Chief Building Official and Fire Marshal as required to review and discuss plan review comments from the Building and Fire Departments. The Consultant shall make any and all revisions to the plans and provide all submittals to the City as required by the City of Milpitas Chief Building Official and Fire Marshal in order for the City to issue the required building permits.

13. The Consultant shall be responsible for reviewing, coordinating, integrating and preparing all construction documents of all Sub-Consultants (such as the structural engineer, mechanical engineer, electrical engineer, audio/visual technology, civil engineer and other appropriate consultants), obtaining the stamp and signature on the plans of those consultants and incorporating into each set of plans and each submittal to the City and City Building Inspection Division those plans, calculations, reports and other documents prepared by Sub-Consultants. Plans, which are prepared by Sub-Consultants and not incorporated into sets of complete plans, will not be accepted by the City Building Department and will not satisfy achievement of the milestone.
14. CONSULTANT shall fulfill all of the design requirements of the County of Santa Clara Environmental Health (for future retail beverage/food service), and the Milpitas Library Building Program and Conceptual Design for the east parking garage.
15. Consultant shall provide design coordination of structural system, mechanical, HVAC, plumbing, data/voice raceway, audio/visual technology, electrical, lighting, telecommunications, alarm, and other systems, for proper location, clearance and space requirements, in order to eliminate conflicts between these systems.
16. CONSULTANT shall design and detail all aspects of the project as their work, and limit the amount of design and detailing required during construction or required by the Construction Contractor, to those items specifically enumerated in the CONSULTANT's proposal and incorporated into this contract. CONSULTANT shall provide performance specifications and specific examples of material, products, fixtures and equipment that meet the performance specification. CONSULTANT shall neatly list all submittals required in the construction documents, organized in reasonable categories, on a spreadsheet, indicating: the item, the estimated quantity, estimated cost, at least one acceptable manufacturer or material supplier, and references to the item mentioned in the contract documents, other pertinent comments or information.
Generally, systems or products that are proprietary, licensed, or require periodic payments for continued use, are not acceptable. Exceptions may be allowed for certain software and other items, where CONSULTANT has provided reasonable information that indicates the use is necessary and cost-effective to the City.
17. All work shall be done in an electronic format, appropriate to the work product, including (AutoCAD) drawings, plans, elevations, sections, diagrams, details, etc., (Word) specifications, reports, and other narrative, (PowerPoint) presentations, (Excel) Spreadsheets, (Primavera or Project) schedules, and other appropriate digital electronic

formats. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a hard (Mylar or paper) copy.

B) Estimate of Probable Construction Cost:

Consultant shall be responsible to design the PROJECT to the approved construction budget. The CONSULTANT shall provide an Estimate of Probable Construction Cost at every major design submittal, to demonstrate the design is within the approved construction budget.

SECTION 2: SCOPE OF WORK

The Consultants' scope of services for this PROJECT shall include all necessary design elements for these new and renovated facilities. The Consultant shall provide in-house personnel or subconsultants to perform the services described below and in this AGREEMENT, including but not necessarily limited to:

- Architectural Design
- Acoustical/vibration Design
- Audio/Visual technology design
- Building security design
- Civil Engineering
- Code Compliance and associated documentation
- Cost Estimating
- Data and Voice Cable and Raceway design
- Electrical Engineering Design
- Elevator Design
- Environmental/energy conservation Design
- Fire Protection Design
- Geotechnical Engineering
- Graphic and Signage Design
- Interior Design
- Land surveying
- Lighting Design
- Mechanical Engineering Design
- Plumbing Design
- Structural Design and Calculations

- Technology integration

TASK #1: CONCEPTUAL DESIGN PHASE

- 1.1 CONSULTANT shall conduct soils borings and prepare a geotechnical report for the design of the project foundation and structural seismic design. Consultant shall review the site geotechnical report and topographical survey with the City. The design shall address potential noise and vibration factors, particularly from rail lines, and minimize negative impacts of noise, and reasonably isolate vibration from negatively impacting the use of the building.
- 1.2 CONSULTANT to prepare Team Meeting organizational meeting to introduce team members, establish PROJECT communication, discuss participants' roles, responsibilities, and authority with the CITY.
- 1.3 CONSULTANT to review and identify any site related discrepancies from the survey reports and other site reports that might affect the PROJECT.
- 1.4 CONSULTANT to review local building codes, and the recommended Library Conceptual Design, or preliminary Parking Garage sketches, document and provide a written report acknowledging this review has been performed and to identify any design issues or opportunities.
- 1.5 CONSULTANT shall meet with the City's Library design consultant, and Health Center consultant on architectural, and power generation issues and address how the design will complement and incorporate elements of the Library or Health Center buildings.
- 1.6 CONSULTANT to meet with CITY Building and Planning departments to confirm zoning and CEQA review and approval requirements.
- 1.7 CONSULTANT shall tour the site with City staff and conduct a tour for City staff of at least 3 Parking Garages that the Consultant and CITY mutually identifies, in order to include desirable elements and avoid undesirable elements in the design where possible.
- 1.8 CONSULTANT shall perform site analysis, generate and test options by providing calibration of layout, location, massing, etc., and refine the building and site concepts.
- 1.9 CONSULTANT to review program and confirm budgets and schedule requirements and provide a written report to confirm these documents, for the City's consideration.
- 1.10 CONSULTANT to prepare Team Meeting to review and confirm site analysis studies and test options of the design alternatives with the CITY.
- 1.11 CONSULTANT to prepare at least two conceptual site plan alternatives.

- 1.12 CONSULTANT to prepare pre-schematic site plan diagrams, and three-dimensional study massing models, for alternatives. Massing models shall address solar impacts on the building, including glare, warming, and other effects, and illustrate day and night conditions from both interior and exterior perspectives.
- 1.13 CONSULTANT to test by calibrating (i.e. location, massing, etc.) and refine site plan alternatives and Midtown Parking Garage program.
- 1.14 CONSULTANT to prepare Team Meeting and present alternatives study massing models, and site plan diagrams for review, with the CITY to select a preferred alternative for refinement.
- 1.15 CONSULTANT to revise and finalize CITY'S selected alternative.
- 1.16 CONSULTANT to prepare Team Meeting, Subcommittee Meeting, and present final site plan design for review and approval to the CITY.
- 1.17 CONSULTANT to prepare an evaluation of radio communication effectiveness inside and outside the building.

TASK #2: SCHEMATIC DESIGN

- 2.1 CONSULTANT to prepare Team Meeting, and Subcommittee meetings, to present the conceptual building alternatives.
- 2.2 CONSULTANT to refine Schematic Plan based on meeting and other review comments.
- 2.3 CONSULTANT to do preliminary code compliance review per CITY Building, Fire and Planning Departments requirements.
- 2.4 CONSULTANT to prepare Schematic Design package and statement of probable construction cost.
- 2.5 CONSULTANT shall provide all services necessary for the preparation of Schematic Design documentation for review and approval by the CITY. Said Schematic documentation shall be based on the CITY approved conceptual design and shall be of sufficient scope and detail to fix and describe the size and character of the PROJECT.
- 2.6 Schematic Design documentation services to be provided by CONSULTANT shall include, but not be limited to, the following:
 - a. Architectural design/documentation services, including development of all Schematic Design documents necessary to establish the final scope, relationships, forms, size, appearance and cost of the PROJECT.
 - b. The Schematic Design Documents shall include scale drawings for the following:
 - the site plan with on-site and off-site work information;

- preliminary building plans depicting the area and configuration requirements for all interior and exterior spaces and demonstrating the solution for pedestrian & vehicular access and adjacency requirements;
- sections including the context; elevations including the context; and, colored plan diagrams showing programmed uses and circulation.

- c. The Schematic Design Documents shall include study models, perspective sketches, electronic modeling or combinations of these media. Models shall illustrate the building's day and nighttime appearance from interior and exterior perspectives and the impact of solar effects on the building.
- d. The Schematic Design Documents shall describe preliminary alternatives for materials, finishes, systems and products including an evaluation of their life cycle cost, durability.
- e. The Schematic Design Documents shall describe preliminary selections of major building systems and construction materials.
- f. The Schematic Design Documents shall indicate site improvements including landscaping outdoor spaces and location and layout of parking for employees, city vehicles and visitors, deliveries, book drops, refuse collection, and pedestrian access. It shall also include a description of materials and equipment.
- g. The Schematic Design Documents shall include schematic engineering design recommendations consisting of preliminary written statements of design criteria for civil, structural, mechanical, plumbing, electrical, fire protection, acoustical, lighting, security and data/telecom systems. For each discipline, these statements shall include, but not be limited to: design criteria required by the Building Program, building design and/or code requirements, identification of preliminary design loads and performance criteria.

2.7 Documents shall identify preliminary space requirements for structural and building enclosure systems, preliminary space requirements for all mechanical systems and other equipment, and points of connection for utilities.

2.8 Coordination of major Mechanical, Electrical, Plumbing and Information Technology Systems and building structure. Resolve conflicts between these and any other elements:

- a. Specification services, including development of preliminary outline specifications and preparation of necessary design documents consistent with CITY standard specifications and details and the City contract boilerplate.
- b. The CONSULTANT shall be allowed to identify bid alternates, as they deem necessary to enhance the possibility that actual costs shall agree with the statement of probable construction cost.

- c. CONSULTANT shall submit one (1) electronic digital set, one (1) set of Reproducible, and six (6) copies of the 50% and 100% phase of Schematic Design Documents for the CITY.
- d. CONSULTANT shall carefully review and respond to the comments of CITY.
- 2.9 CONSULTANT shall address all review comments and revise Schematic Design Documents as required by the CITY.
- 2.10 CONSULTANT shall attend one value engineering session lasting up to eight (8) hours with Consultant's cost estimator, the CITY and its' representatives and Consultant's major subconsultant disciplines.
- 2.11 CONSULTANT shall prepare Team Meeting to present 50% Schematic Design package for review.
- 2.12 CONSULTANT to finalize Schematic Design package incorporating comments from the Value Engineering session.
- 2.13 CONSULTANT shall prepare and attend Team Meeting to review and approve 100% Schematic Design Package.
- 2.14 CONSULTANT to prepare renderings and appropriate study models sufficient to communicate design intent to a broad audience.
- 2.15 CONSULTANT to prepare and present the Schematic Design package to the Subcommittee Meeting, to the City Council Meeting, and to at least one community meeting, as directed by the City.
- 2.16 CONSULTANT to prepare and submit a complete Site Development Permit Application to the Building and Planning departments for review and approval.

TASK #3: DESIGN DEVELOPMENT

- 3.1 CONSULTANT shall coordinate and manage its subconsultants throughout the design development phase and coordinate with the City, City's representatives and key departments, including but not limited to CITY'S Building, Planning, Fire, Engineering & Information Services staff.
- 3.2 CONSULTANT shall attend at least one meeting with the Milpitas Arts Commission and/or other Public Art committee for coordination of an arts program.
- 3.3 CONSULTANT shall prepare design development documents as specified in section 3.9 "Deliverables" based on refinement and further development of the approved schematic design, including preliminary furniture layouts, built-in fixtures, and equipment selections.
- 3.4 CONSULTANT shall attend Team Meeting, and Subcommittee Meeting, and present 50% design development package for review and approval by the CITY.

- 3.5 CONSULTANT shall refine design development plans based on comments received from CITY.
- 3.6 CONSULTANT shall coordinate meetings with Building & Fire Department to review plans.
- 3.7 CONSULTANT shall finalize design development package as noted in Section 3.9.
- 3.8 CONSULTANT shall attend Team Meeting, Subcommittee Meeting, and City Council Meeting to present 100% design development package for review and approval by the CITY.
- 3.9 Deliverables:
- a. Design Development package that illustrates and describes the refinement of the design of the Project, establishing the scope, relationship, forms, size and appearance of the Project by means of plans, building and wall sections, exterior elevations, typical construction details, equipment layouts.
 - b. Site plans and floor plans for all major disciplines.
 - c. Preliminary furniture layout plan.
 - d. Preliminary finish, materials and equipment schedules.
 - e. CONSULTANT shall submit one set of electronic digital documents, one set of Reproducibles and six copies of Design Development package (excluding models) at the 50% and 100% completion of Design Development for review by the CITY.
 - f. Outline specifications: Specification shall identify the major materials and systems and shall establish their general quality levels.
 - g. Details and specification shall be consistent with the Construction Specifications Institute (CSI) format.
 - h. Engineering documents shall include single line diagrams describing structural, mechanical, plumbing, telecommunications, security and electrical systems.
 - i. Principal interior and exterior elevations showing preliminary locations of all electrical and mechanical controls as well as life-safety devices for coordination with furniture layout.
 - j. Cost estimate: CONSULTANT shall submit estimate of Probable Construction cost in coordination with the CITY'S Construction Management consultant for review by CITY.
 - k. Consultant shall prepare and attend a Team meeting, to review the cost estimate and to confirm that the design is still within the City-approved construction budget. Should the design not be within the budget, Consultant shall revise the design as

required and approved by the City to bring the design within the approved budget. The City may retain an independent cost consultant, to assist in determining the cost estimate of the design.

I. Consultant shall prepare design development documents consisting of at least the following drawings:

- Access control
- Audio/Visual Design and details
- Architectural Floor Plans
- Building Code Analysis and Vicinity Map
- Building Elevations
- Building Sections
- Building Equipment plan
- Ceiling Plan
- Ceiling Details
- Cost Estimate
- Demolition, (Selected) Plans, as necessary
- Detailed Site Plan
- Door/Window Schedules
- Elevator Plans
- Electrical Plans
- Electrical Room Details
- Exterior Elevation Plans (all)
- Exterior Elevations (enlarged partial)
- Exterior Wall Details
- Finish Schedules
- Graphics and Signage Design
- Foundation Plan
- Foundation sections and details
- Furnishing Plan
- First Floor Lobby Plans
- First Floor Finish Plans
- Fire Sprinkler Plans
- Floor Finish Plans

- Floor Lobby Plans
- HVAC System Plans
- Interior Design
- Interior Elevations
- Interior Elevations (Restrooms)
- Landscape/Irrigation Design
- Mechanical Plans
- Mechanical Room Details
- Millwork Details
- Project Design Schedule
- Physical/Visual attributes
- Preliminary Lighting and details
- Security System design and details
- Reflected Ceiling Plans
- Restroom Plans (enlarged)
- Deck Plans
- Deck Details
- Security Plans and Details
- Stairs Plans
- Structural Plans
- Site Plan
- Specifications
- Submittals list
- Telecommunications layout and details
- Temporary Shoring and Temporary Facilities Plans
- Voice and Data Design
- Wall Sections/Details All Elevations

TASK #4: CONSTRUCTION DOCUMENTS:

- 4.1 CONSULTANT shall coordinate and manage sub consultants throughout construction documents phase.
- 4.2 CONSULTANT shall refine and further develop the approved Design Development package based upon CITY'S comments on the 100% Design Development package review.

- 4.3 CONSULTANT shall attend one meeting with the Arts Commission and/or Public Art committee for coordination of the arts program in the construction documents.
- 4.4 CONSULTANT shall attend Team Meeting: 30% construction documents presentation.
- 4.5 CONSULTANT shall prepare 60% construction documents package, with CITY'S comments from the 30% package incorporated.
- 4.6 CONSULTANT shall attend Team Meeting: Review documents and finalize materials and finishes with CITY.
- 4.7 CONSULTANT shall prepare 95% construction documents package, with CITY'S comments from the 60% package incorporated, and cost estimate.
- 4.8 CONSULTANT to coordinate with CITY'S telecommunications, audio / visual and security staff.
- 4.9 CONSULTANT shall attend Team Meeting: Present 95% construction documents package to CITY for review and approval.
- 4.10 CONSULTANT to complete construction documents package for Building and Fire department plan check review and permitting. Consultant shall submit permitted plans to the Engineering Department for Bidding.
- 4.11 CONSULTANT shall attend Team Meeting: Present 100% construction documents package, with CITY'S comments from the 95% package incorporated.
- 4.12 CONSULTANT shall prepare the 100% Construction documents package with final quality control review from CITY and Fire Department back check corrections.
- 4.13 CONSULTANT shall make a formal presentation of the design along with the engineer's estimate to the Subcommittee Meeting and City Council Meeting for Plan approval,
- 4.14 Deliverables:
 - a. The CONSULTANT shall provide a Construction Documents package based on the approved Design Development Documents, CITY reviews, and updated budget for the Cost of the Work. The Construction Documents shall not be submitted until the design is within the approved construction budget. The Construction Documents packages shall set forth in detail the requirements for construction of the project. The Construction Documents package shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.
 - b. Construction Documents package shall include drawings and specifications from all disciplines, executed to a level of detail appropriate for open public bidding. They should include plans overlaying voice & data cabling with furniture layout as necessary, elevations reflecting relationships between furnishings and items

affecting their placement. Site improvements shall include all details necessary to coordinate and properly locate utilities, driveways, roadways, at-grade parking, curbs and gutters, landscape, irrigation and hardscape design.

- c. During the development of the Construction Document package, the CONSULTANT shall prepare the Project Manual that includes the Conditions of the Contract for Construction, Specifications, and bidding requirements and sample forms furnished by the CITY.
- d. CONSULTANT shall submit one set of Reproducible documents and one set of electronic digital documents at 30%, 60%, 95% and 100% completion of Construction Documents for review and approval by the CITY and for bidding. A full size Mylar set, wet stamped by all the appropriate licensed design disciplines are required for bidding.
- e. CONSULTANT shall include detailed technical specifications, which are coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines.
- f. CONSULTANT shall provide final estimate of probable construction costs with the 100% complete construction documents.
- g. CONSULTANT shall provide, if necessary and, as directed by the CITY, bid alternates to ensure the Project stays within 5% above or below the construction estimate amount.

4.15 One or more "Independent Checks" of the plans, specifications and bid documents may be performed by an independent party commissioned by the City prior to advertising for construction bids. CONSULTANT shall incorporate any revisions or comments from these reviews in the final bid documents. These checks may include architectural peer reviews and/or constructability reviews. These independent checks are to be performed strictly for the benefit of the City, and they shall not relieve the CONSULTANT from its obligations under this Agreement, including but not limited to its obligation to provide a complete and accurate set of plans, specifications and bid documents. The City is not obligated to perform any independent check, and the CONSULTANT shall not rely upon it for any quality or quantitative check or review.

TASK #5: BIDDING AND AWARD:

5.1 CONSULTANT shall assist CITY during bid solicitation process.

- 5.2 CONSULTANT shall prepare one reproducible bid package for CITY, and will make available to the CITY an electronic version of the Construction Documents.
- 5.3 CONSULTANT shall provide bid phase services, as requested by the CITY, through award of the Contract for Construction for the following:
- a. Responses to bidders' inquiries.
 - b. Preparation of addenda.
 - c. Attendance at one (1) pre-bid meeting.
 - d. Evaluation of bids.
- 5.4 Deliverables:
- a. One (1) reproducible 100% Construction Documents package revised with
- 5.5 CITY'S reviews and plan check, including Fire Department, ready for Bid, Award, and Construction.

TASK #6: CONSTRUCTION ADMINISTRATION:

- 6.1 CONSULTANT shall coordinate all of its construction administration services with CITY'S construction management, who will be responsible for the management of the construction project. The CONSULTANT shall provide administrative services as set forth below and pursuant to the General Conditions of the Contract to be awarded by CITY for construction of the project.
- 6.2 CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction to the construction contractor and terminates at the conclusion of the warranty/guarantee periods for the contractor's work.
- 6.3 CONSULTANT shall be a representative of and shall advise and consult with the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have the authority to act on behalf of the CITY only to the extent provided in this Agreement or any properly executed amendment to this Agreement. CONSULTANT's services are for the sole benefit of CITY. During all communications and other services being provided under this Agreement, Consultant shall be the City's representative and fully represent the City's interests against the interests of others (including Consultant and its subconsultants).
- 6.4 Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.

- 6.5 CONSULTANT shall review all requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information ("RFI") about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.6 Consultant shall respond in writing to all RFI's within 10 calendar days, and if the RFI requires a quicker response due to the RFI's effect on the construction, then the City's Project Manager shall designate an earlier deadline for response (but no sooner than 36 hours after the RFI is delivered or faxed to Consultant) and Consultant shall timely respond. For each calendar day that Consultant fails to timely respond to an RFI, Consultant shall owe \$1,000 per day to the City as liquidated damages for the costs to the City caused by the delay in response; the City shall have the right to withhold any such liquidated damages from any payments to Consultant.
- 6.7 If deemed appropriate by the CONSULTANT and upon CITY'S approval, the CONSULTANT shall on the CITY'S behalf, prepare, reproduce and distribute supplemental specific Drawings or Specifications in response to requests for information by the Contractor. If the Consultant's response to an RFI leads to inconsistencies with, and/or errors or omissions in, other parts of the design, plans and/or specifications, then Consultant shall refer to those inconsistencies in the RFI response. Should the number of RFI responses be high enough that it would likely lead to confusion or misunderstanding by the contractor, then City may require Consultant to prepare updated plans and/or specifications that incorporate the RFI responses and eliminate the inconsistencies, errors and omissions.
- 6.8 CONSULTANT shall interpret matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made to CITY in writing within the time limits agreed upon or otherwise with reasonable promptness. Upon CITY'S approval, CONSULTANT shall deliver the response to the Contractor.
- 6.9 Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents. However, the CITY shall make the final determination regarding all such matters.
- 6.10 CONSULTANT shall visit the site at intervals appropriate to the stage of the Contractor's operations and coordinate visits with the CITY'S Construction Management consultant, or

as otherwise agreed by the CITY, and the CONSULTANT in Section 6.16, paragraph A, subsection 2 of this Exhibit in order:

- a. To become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed.
- b. To notify the CITY of observed defects and deficiencies in the Work, and,
- c. To determine in general if the visually observable Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

6.11 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.

6.12 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.13 The CONSULTANT shall advise the CITY if the CONSULTANT identifies work that does not conform to the Contract Documents.

6.14 SUBMITTALS:

- a. The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data Mock Ups and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay to the Work or in the activities of the CITY, Contractor or separate contractors, while allowing sufficient time to permit adequate review. CONSULTANT'S review and action on such submittals shall not relieve or diminish the Contractor's primary responsibility.
- b. The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
- c. If in the event that professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT

shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.15 CHANGE ORDERS:

- a. The CONSULTANT shall assist the CITY'S Project Manager in the preparation of Change Orders and Construction Change Directives for the CITY'S approval and execution in accordance with the Contract Documents. If necessary, the CONSULTANT shall prepare, submit to CITY for approval, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in this Section 6.15, Paragraph B.
- b. The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract price or time of completion. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable recommendation to CITY without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the CONSULTANT may recommend to the CITY that the requested change be denied.
- c. If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those changes into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.
- d. The CONSULTANT shall maintain all records relative to changes in the Work.

6.16 Upon completion, CONSULTANT shall provide copies of the updated electronic documents to the Contractor, who will use their record documents to incorporate all modifications to the as-built documents per this Agreement.

6.17 SCHEDULE OF SERVICES:

- a. CONSULTANT shall provide the following Design and Contract Administration services, and any services beyond the following services shall be designated as

Additional Services for which CONSULTANT shall be paid according to Sections 2.4 and 2.9 of the Agreement:

- Up to three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittal to the Contractor.
 - Up to 110 visits to the site (assuming a minimum of one per week) by the CONSULTANT over the duration of the Project during construction. CONSULTANT will visit the site to observe portions of the Work to determine whether such portions of the Work are substantially complete in accordance with the requirements of the Contract Documents. CONSULTANT shall visit the site an additional ten (10) times to prepare and track the punch list, and to determine final completion.
 - Up to one (1) additional site visit for observation for any portion of the Work to determine final completion, and the provision of punch list items once Contractor, with approval of the CITY, has determined the Project is completed.
- b. The following Design and Contract Administration Services, requested by CITY, shall be provided by the CONSULTANT as an Additional Service:
- Evaluation of a number of modifications submitted by the CITY;
 - Evaluation of substitutions proposed by the CITY and making subsequent revisions.

6.18 PROJECT COMPLETION:

- a. The CONSULTANT shall conduct observations to determine the actual date of final completion; shall receive from the Contractor, and forward to the CITY for the CITY'S review and records, written warranties, operations and maintenance manuals, as-built documents, and related documents required by the Contract Documents and assembled by the Contractor; and shall issue a Final Certificate for Payment based upon a final observation indicating the Work complies with the requirements of the Contract Documents.
- b. The CONSULTANT'S observation for Final Completion shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents package and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- c. During CONSULTANT's observations for determination of Final Completion, the CONSULTANT shall inform the CITY about the balance of the Contract Sum

remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.19 FACILITY OPERATION SERVICES:

- a. The CONSULTANT shall request that the Contractor and its designated subcontractors meet with the CITY or the CITY'S Designated Representative before or promptly after occupancy to review the facility operation services, such as HVAC, electrical and any other building systems. The CONSULTANT and its subconsultants shall attend the meeting.

TASK #7: RECORD DOCUMENTS AND PROJECT CLOSE-OUT:

- 7.1 CONSULTANT shall review contractor-supplied operation and maintenance manuals and provide copies to City where necessary, i.e. fire alarm and elevator.
- 7.2 CONSULTANT shall review contractor warranties.
- 7.3 CONSULTANT shall prepare specifications to require that the Contractor prepare record documents throughout the Project construction, and prepare as-built drawings and specifications based on record field construction documents package. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the contractor's as-built drawings and specifications, and shall return them to contractor for revision if they are not accurate and complete. Once approved by CONSULTANT as complete and accurate, then the CONSULTANT shall prepare and sign the Record Drawings in the appropriate area and submit both a hard copy on mylar and an electronic copy on Compact Disc (CD) to the City within 25 days.
- 7.4 Prior to the expiration of each of the contractor's warranties and guarantees, CONSULTANT shall perform a comprehensive review of the work subject to each warranty and guarantee. CONSULTANT shall timely report any defective materials or workmanship to the City so that the City may make timely demand to the contractor to repair the defects.

SECTION 3: ESTIMATE OF CONSTRUCTION COST:

- A. CONSULTANT is responsible for designing to the City's construction budget. The City's construction budget shall be generally within the Cost Plan established in the Building Program and shall be specifically stated at the pre-proposal conference. Consultant shall provide their statement of construction cost with each review submittal (at the end of

schematic design, at design development and at the end of construction documents (99% and 100 %CD's). The City may use an independent cost consultant as a sole resource to the City. Designer shall not proceed further until each design submittal's cost estimate is within the City's Construction budget, and reconciled to the City's independent cost estimates.

Consultant acknowledges that it is in a significantly better position than the City, to estimate the cost of the actual construction to be paid by the City to the contractor and others, because the CONSULTANT is a member of, is familiar with, and has regularly worked within the construction industry, and therefore Consultant will provide these estimating services and be held accountable for the estimate, as described below. The "Construction Budget" for the Project is the amount available for the bid of the lowest responsible and responsive bidder plus a 10% contingency for change orders. Likewise, the Consultant's estimate of "construction cost" for the Project shall be based on the estimated bid of the lowest responsible and responsive bidder plus a 10% contingency for change orders.

- B. The City shall establish the Construction Budget in writing at the pre-proposal conference, and may adjust the budget at the 30% design stage. Any and all estimates submitted by Consultant shall be reasonable and be sufficiently detailed to allow critical review by the City for reasonableness.
- C. As the design process progresses, CONSULTANT shall update and refine the estimated construction cost as required in Section 2-"Basic Services" of this Exhibit. CONSULTANT shall advise the CITY of the reason for any adjustments to the previous estimated construction cost.
- D. Should the any estimate of construction costs submitted by Consultant exceed the Construction Budget, CONSULTANT shall at the same time submit, without additional cost to CITY, reasonable alternative approaches to the design and construction of the Project (including scope and quality) that will reduce the construction costs to be equal or less than the Construction Budget. Consultant shall include estimated construction costs for each alternate approach. If the City adopts one or more of the alternate approaches, then CONSULTANT shall make the adopted changes and provide a revised estimated construction cost based on the revised design. If the City does not timely choose to adopt sufficient alternate approaches to reduce the estimate of construction costs to, or below, the Construction Budget AND the City does not timely direct Consultant to develop other

alternate approaches, then the Construction Budget shall be deemed to have increased to the Consultant's estimate of construction costs.

- E. At the same time as, or prior to, submission of the 100% complete construction documents, Consultant shall submit in writing its final estimate of construction cost that is equal to or less than the Construction Budget. The construction documents will not be complete until such a final estimate is submitted.
- D. If bids for the Project are not opened within 90 days after the CONSULTANT submits the final estimate of construction cost, then the estimate of construction cost may be reasonably adjusted by the City to reflect any changes in the general level of prices in the construction industry between these two dates: (a) 90 days after the Consultant submits the final estimate, and (b) the date that bids are opened.
- E. If, at the time that the bids on the construction documents are opened, the sum of the bid of the lowest responsible and responsive bidder, exceeds the estimated construction cost by 10% or more, the consultant shall revise the design to reduce the construction costs;
- F. If the CITY chooses to proceed under Paragraph E. above, the CONSULTANT, without additional compensation, shall modify the construction documents for which the CONSULTANT is responsible under this Agreement as much as necessary to meet the CITY'S Construction Budget.

SECTION 4: ADDITIONAL MISCELLANEOUS REQUIREMENTS:

Consultant's Use of Subcontractors:

If the Consultant intends on using subconsultants or subcontractors to perform work associated with this contract within the City's Right of Way, the Consultant shall ensure any subconsultant/subcontractor they utilize for work specified under this agreement are appropriately licensed and bonded for the work involved. Use of unlicensed contractors is prohibited. The Consultant shall submit copies of all licenses for proposed subconsultants/subcontractors to be used.

Project Plan and Specification Preparation:

The Consultant shall prepare Project Plans using the City's Standard Title Block to be located at the bottom right of each Plan sheet. Final signed plans shall be completed using Mylar. Project Specifications shall be prepared using the City's standard front end document – Sections A, B, C, D. The City also has several Technical Specification Sections (E) which are also standard to be used on each project. Specifications shall be created in conformance with the State of California Department of Transportation Division of Construction guidelines. Specifications shall be in CSI format. The construction schedule shall be specified in Calendar Days.

Storm Water Pollution Prevention and Erosion Control:

Consultants shall ensure their project design is compliant with latest City, State, and Federal Storm Water Pollution Prevention and Erosion Control guidelines, and ensure the design can be constructed in conformance with these guidelines.

Quality Control/Quality Assurance (QC/QA):

In addition to the standard of care described in this Agreement, including but not limited to Section 1.2, the Consultant shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality, free of technical and grammatical errors. Consultant shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

QC/QA program in effect for the duration of this contract;

Design and calculations are independently checked, corrected and backchecked by the CONSULTANT;

When different disciplines are involved, means to assure that conflicts and misalignments do not exist;

QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;

QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.

City reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments, QC/QA, compatibility, workable design and constructability of the design is the Consultants sole responsibility;

Project Meetings:

Consultant is advised that the number and nature of meetings described below and elsewhere in this agreement, are intended to provide a minimum level of meeting attendance required. Additional non-City Council meetings shall be required through the course of the design and construction process. Also, Consultant should expect to attend at least one City Council meeting per month during the entire project duration (including post occupancy.) During the design submittal and approval process, or when special issues arise, the Consultant shall prepare to attend both Council meetings each month. City Council meetings are held at 7pm on the first and third Tuesday of every month. All meeting attendance, participation and related costs shall be incorporated in the total cost of the Consultant's fee. In addition, the Consultant will be required to attend all Library Subcommittee meetings (estimated at twice a month.) In addition, the Consultant will be required to make periodic presentations to the Library Advisory Committee and the County Library Joint Powers Board. Lastly, the Consultant is required to attend weekly project management meetings to report on project progress and coordination with other project elements. During construction, the Consultant is required to attend, assist, consult, provide clarification and resolve construction problems related to the design, plans and/or specifications, at weekly construction coordination meetings.

MIDTOWN GARAGES PROJECT AGREEMENT

DRAFT

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND**

THIS AGREEMENT for consulting services regarding the new Milpitas Midtown Garage ("Project") is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and _____ ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2005 (the "Effective Date") in Milpitas, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____, 200_, and Consultant shall complete the work described in Exhibit A - Part 1, (Design and Bidding Services) by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The parties will discuss an amendment to this Agreement to complete the work described in Exhibit A - Part 2 (Construction Services) prior to the expiration of the current term (for Part 1.) Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control as determined by the City.

1.2 Standard of Performance. The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultant working in the geographical area in which Consultant practices its profession. Consultant represent themselves as a recognized leader and experienced practitioner in the field of work for the scope of this project and are responsible for performing all work appropriate and necessary to produce a bid package suitable for competitive public bidding as required by the scope of work of this contract.

Consultant acknowledges that it is their obligation to prepare (a) bid package(s), including plans, specifications, and other bid documents; suitable for bidding under the Public Contracts Code.

Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package(s). The Consultant shall produce a 100% Construction Documents ready for bid within the schedule, and prior to bidding. The Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 5% of the total construction bid price.

1.3 Assignment of Personnel. Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ or is otherwise physically unable to perform the job duties. The

new person shall be at least of equal status and experience to the designated person. If City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any designated persons, Consultant shall, upon receiving notice from City of such desire of City, reassign such person or persons. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. City may require Consultant to provide monthly labor reports if City feels that appropriate personnel are not being assigned to project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

1.4 Time.

Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above. Consultant shall complete each phase by the date scheduled in Exhibit A.

Section 2. COMPENSATION.

City hereby agrees to pay Consultant a lump sum amount of _____ Dollars (\$_____.), for all work set forth in Exhibit A, Part 1; plus all Reimbursable Expenses incurred in performing the work, as described in Exhibit B, not to exceed _____ (\$_____.); plus Additional Services, if any, not to exceed _____ Dollars (\$_____.). Total Compensation shall not exceed _____ Dollars (\$_____.) City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

2.1 Completion On Schedule.

Consultant and City agree that the Consultant has developed both the time schedule and the fee schedule for each phase of work described in Exhibit A. Therefore, the Consultant shall complete each phase on schedule and City shall pay the full lump sum for each phase, which is divided into a 95% Fee for completion and a 5% Fee for early or on-time completion. On-time completion is completion by the scheduled date for that phase. If the Consultant completes work ahead of schedule this will provide float in the schedule as a Consultant resource, but will not change the scheduled dates of subsequent tasks. If the Consultant completes a phase after the scheduled date it does not change the scheduled dates for subsequent tasks except as provided for herein.

If any phase is completed late Consultant forfeits the 5% Fee amount. The Consultant is expected to add resources and take whatever measures are necessary to accelerate the work to meet the next phase's scheduled date. If the Consultant recovers the schedule by completing the next or subsequent tasks by their scheduled dates, any otherwise previously forfeited 5% Fee amounts will be paid to Consultant.

If any phase is not completed within one week after the scheduled date, the City may subtract the amount of seven thousand dollars (\$7,000.) per week, from the 95% Fee as liquidated damages for each week that completion of the phase exceeds the scheduled date. Each week paid, as liquidated damages, will add a week to the remaining phase's scheduled dates.

2.2 Invoices

Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the percentage of project phase completion prior to the invoice date, as shown in Exhibit B. Invoices shall contain the following information:

- Serial identifications of progress bills; *i.e.*, Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A tabulation of Reimbursable Expenses for the billing period;
- Total invoice amount, total billed to date, and remaining amounts, for each phase.
- Certification of the lack of compensation on the Project other than compensation from the City;
- False Claims Act certification in the form set forth in Exhibit J;
- The Consultant's signature.

2.3 Monthly Payment

City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

2.3.1 Retention

City shall retain 10% of each approved payment and withhold that amount. The City shall release retention accrued through the end of the bidding phase after a Successful Construction Bid is received for the Project. For the purposes of this paragraph, a Successful Construction Bid is a responsive bid within 110% of the Final Construction Bid Estimate, or a bid that is awarded by the City Council. If the project is not issued for bid within 60 days of Building Division's approval of the plans and specifications for issuance of a Building Permit, the duration of such plan approval to be in accordance with City standard plan check review time, City will release full retention.

2.3.2 Additional Withholding

City shall have the right to withhold an amount from any payment, including final payment, to compensate the City for costs, fees, damages and other amounts incurred by the City to the extent that such City's incurrence of said amounts was caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, (b) acts for which they could be held strictly liable, (c) or as provided for elsewhere in this contract.

2.4 Total Payment. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.9 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

2.5 Additional Services. A contingency amount of one _____ dollars (\$_____) is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B. These fees shall apply through the end of the calendar year in which this Agreement is signed and shall be adjusted each year to be the lesser of the Consultant's standard billing rates or an increase no more than the change in San Francisco-Oakland-San Jose All-Urban Consumers Price Index.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed _____ dollars (\$_____). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement. This amount shall not be exceeded without written

authorization of the City and an appropriate increase in the Reimbursable Expense Budget. Travel, food, and accommodations are not reimbursable expenses.

- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.9 **Payment upon Termination** If the City terminates this Agreement without cause, pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all accrued retention to-date and the current month's payment as liquidated damages for the loss to the City to administer the completion of the work by others.
- 2.10 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant asserts is beyond the scope of work of the present contract phase. Consultant shall not delay in commencing the work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.
- 2.10 **Responsibility for Additional Costs.** The Consultant is required to design the project within the City's final construction budget within the cost plan shown in Exhibit D, which defines the anticipated bidding criteria. If the lowest responsible bid for the construction of the Project exceeds the last approved Consultant's bid estimate (Final Construction Bid Estimate) by more than 10%, and City directs Consultant to revise the bid documents for the purpose of reducing the Project cost, Consultant shall make said changes with no increase in fee. If the Project is then re-advertised for bid, Consultant shall provide the additional bid services at no extra cost.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in Exhibit K and only under the terms and conditions set forth therein.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide policies to City that meet the requirements of this section. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by the City. Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.

If the City provides Owner Controlled Insurance for the Project, or other comprehensive wrap-around insurance, Consultant shall be required to pay deductible for any insurance claim that Consultant would have normally paid if the Consultant were providing the insurance, provided that the deductible shall not exceed \$150,000 per claim. If City provides insurance, Consultant shall reduce their fee by the amount of savings, if any, that it realizes by the City providing insurance rather than Consultant.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned, non-owned, or hired automobiles, to the extent that they exist.
- 4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 [check form #s] (ed.1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Company-owned automobiles, if any shall be covered at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) or comparable current coverage. Code 1. No endorsement shall be attached limiting the coverage. Consultant shall notify City if any company owned vehicles exist, or if there are any changes in ownership of vehicles owned by the company.
- 4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
- The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.

- 4.3.1 **General requirements.** Consultant, within the fee described in Exhibit B shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim. City may provide Owner Controlled Insurance or a wrap-around insurance policy. If City does not provide insurance, Consultant shall increase insurance limits up to five million dollars (\$5,000,000.) and City shall pay cost of additional premium to increase such insurance, as a separate cost amendment, to increase such insurance.
- 4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:
- The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, as long as it is reasonably available at that time, to the extent provided in the fee structure of Exhibit B.
 - If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
 - A copy of the claim reporting requirements must be submitted to the City prior to the commencement of work under this Agreement.

4.4 All Policies Requirements.

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

4.4.3 **Notice of Reduction in or Cancellation of Coverage.** An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by mail has been given to the City. If any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.

4.4.4 **Additional insured; primary insurance.** Except for the professional liability and workers' compensation policies, a certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

4.4.5 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.

4.4.6 **Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant.

4.4.7 **Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement, for cause.

SECTION 5 INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents (other than the construction contractor(s)), and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, or (b) acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers, and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

If Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 7.4 **Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City understands that incomplete design work and related calculations, and documents may not be suitable for use

If any dispute exists between Consultant and City, Consultant must continue to perform all of its services. City agrees to participate in non-binding mediation if a dispute cannot be resolved informally by the Parties. Consultant must submit its disagreement in writing to the City along with any relevant documentation.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:

8.6.1 Terminating the Agreement;

8.6.2 Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement, including rights to use any designs, concepts, or work;

- 8.6.3 Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or
- 8.6.4 Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to-date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.3 **Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

- 10.7 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 **Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.
- 10.9 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et. seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*

Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.10 **Solicitation.** Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.
- 10.11 **Contract Administration.** This Agreement shall be administered by the Assistant City Engineer or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Assistant City Engineer or designee.
- 10.12 **Notices.** Any written notice to Consultant shall be sent to:
Consultant Name
Address
Attention:

Any written notice to City shall be sent to:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Greg Armendariz

with Copy to:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Mark Rogge

- 10.13 **Professional Seal.** In accordance to licensing regulations and codes, work shall have the professional seal and signature of the licensed professional responsible for the work. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. Submittals to the Building Department shall be stamped as "building permit submittal" and stamped and signed as required by the Building Department's rules.

- 10.14 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.15 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

Exhibit A	Scope of Consultant's Duties and Services
Exhibit B	Compensation Manner and Amount, Reimbursables, Estimated Payment Schedule, Hourly Rates
Exhibit C	Personnel, The Professional Team
Exhibit D	Cost Plan, Construction Budget, Target for final Estimate of Probable Construction Costs
Exhibit E	Certificate of Insurance, Certificate of Workers Compensation Insurance
Exhibit G	Invoice or Claim Declaration
Exhibit H	City Support
Exhibit I	Completeness & Quality Considerations

Exhibits Incorporated by reference:

Library Needs Assessment, dated June 26, 2002 by Arroyo Associates, Inc.

Library Building Program - "Milpitas Public Library Program and Feasibility Study Summary Report", dated February 17, 2004, by Ripley-Scoggin LLP

Library Draft Conceptual Design, by Group 4 Architecture

Consultant_____ Proposal Documents and Materials

The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

Thomas J. Wilson, City Manager

Principal/President
_____.

MILPITAS REDEVELOPMENT AGENCY

Thomas J. Wilson, Executive Director

Principal/Secretary,
Chair Board of Directors
_____.

Attest:

Gail Blalock, City Clerk/Agency Secretary

Approved as to Form:

Steven T. Mattas, City Attorney/Agency Counsel